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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/684,312

10/10/2003

Donna Gail Schneider

DGS001

3321

7590 08/05/2009  
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EXAMINER

GRAVINI, STEPHEN MICHAEL

ART UNIT

PAPER NUMBER

3743

MAIL DATE

DELIVERY MODE

08/05/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/684,312	<b>Applicant(s)</b> SCHNEIDER, DONNA GAIL	
	<b>Examiner</b> Stephen M. Gravini	<b>Art Unit</b> 3743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 21 April 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 17-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 17-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Preliminary matter***

Should applicant's representative have any concerns regarding the previous Office action, he is invited to contact the examiner. The issue resolved by involving examiner's immediate supervisor could have taken a matter of a few minutes, had applicant's representative called the examiner. Only two patentee names and one patent number are different in this action compared to the previous action on the merits. As a result, at least six weeks of prosecution time was lost due to not calling the examiner.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Claim Rejections - 35 USC § 112***

Claim 17 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention. The recitation of a side designation having "user selectable variable construction" is not enabled by the specification to those skilled in the art. That recitation has no basis in the specification as to how a user would select a variable construction. Specification paragraph 25 discusses variable configuration side panels, but not a user selectable feature. Paragraphs 31 and 37 specify that a side may be selectively enclosed, left open, or variable but nothing enabling one skilled in the art a

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user selection. Finally specification paragraph discusses different ways to form a grill, but not the claimed user selectable variable construction. Nothing in the originally filed application would reasonably convey that the invention had possession of this claimed feature.

Claim 17 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claimed “user selectable variable configuration” is indefinite because it is not clear how a user would select a variable construction.

***Claim Rejections - 35 USC § 102***

Claims 17-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Gilbert (US 5,713,344). The new subject matter indefinite recited “user selectable variable construction” feature is treated under the assumption that it was reasonable that the inventor had possession of the claimed invention and that one skilled in the art would be able to make or use the invention. The claims are reasonably and broadly construed, in light of the accompanying specification, to be disclosed by Christen as comprising:

a collapsible frame **10** for suspending an item above a heat source (this statement of intended use gives patentable weight is as much as one skilled in the art would be able to suspend an item from the disclosed invention above a heat source since figures and summary of invention teach this feature), the frame comprising a plurality of sides **28**, **30A**, **30B**, at least one of the sides **28** being designated as having user-selectable variable construction **36** (please see column 3 lines 1-7 in which the skirt panels **36** give main panel **28** its user selectable variable construction feature) and

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the sides **30A**, **30B** other than the designated side **28** collectively constituting the remainder of the frame;

wherein the side having user-selectable variable construction is constructed of at least one panel selected by a user from among a plurality of available panels and wherein the panel is designed to be removably attached to the remainder of the frame as shown in figures 1 and 4 and disclosed at column 3. Christen also discloses the claimed feature wherein the device **10** operates in at least one user-selectable in-use configuration (figure 1) wherein the side having user-selectable variable construction is constructed with fewer than all of the available panels **36** that are able to be used on a single side concurrently and any unused panels are entirely excluded from the construction of the side having user-selectable variable construction (the unused excluded panels is construed to be anticipated by the disclosed top side panel **30** or **40** because a top panel would have to be excluded such that a user would have access to a grill top), wherein the panel selected by the user supports a transverse member **18** for suspending an item above the heat source within the frame wherein the panel selected by the user is attached along at least two different edges of the panel when installed in the designated side (flanges **34** anticipate the claimed attached installation because that reference character acts as a flange when used in conjunction with panel **16** and panel **30**), wherein the panel attaches to at least two different components **14A**, **14B** of the remainder of the frame, wherein a position at which the panel selected by the user is attached to the remainder of the frame is selectable by the user from among more than one possible such position of attachment (this statement of intended use is anticipated

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by the skirt panels **36** because that teaching meets the more than one possible position of attachment to the main panel **38**), wherein the position of attachment of the panel changes at least one of: a proportion of the side that is substantially enclosed, which portion of the side is substantially enclosed by the panel, or a height at which a transverse member, supported by at least one panel, is supported within the frame as best shown in figure1, wherein the side having user-selectable variable construction is constructed of a first quantity of panels **30A**, **30B** to establish a first value of a variable attribute and alternatively constructed of a second quantity of panels **36** to establish a second value of the variable attribute, the variable attribute being at least one of: a proportion of the side that is substantially enclosed or a height at which a transverse member supported by one of the panels, is supported within the frame **50**, wherein the available panels exhibit different heights when applied to the flame and wherein the designated side is selectively constructed by a user to include a panel of specific height by which the user adjusts at least one of: how much of the side of user-selectable variable construction is substantially enclosed or at what height a transverse member is supported within the frame as best seen from figure 1, wherein the side having user-selectable variable construction is constructed to comprise a first panel and a second panel, the first and second panels having different heights, wherein, in attaching the first and second panels to the remainder of the frame, the first panel is placed above the second panel to support the transverse member at first height and the first panel is placed below the second panel to support the transverse member at a second height different from the first height as disclosed in column 3 lined 30-49, wherein the side

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having user-selectable variable construction comprises first **30A** and second panels **30B**, both concurrently attached to the remainder of the frame **50**, and a transverse member is user selectable to either be directly supported by the first panel in accordance with a first user-selectable configuration or to be directly supported by the second panel in accordance with a second user-selectable configuration.

### ***Response to Arguments***

Applicant's arguments filed April 21, 2009 have been fully considered but they are not persuasive.

### ***Christen anticipation***

Examiner has corrected any minor typographical errors that may have confused applicant with respect to the prior art reference Christen anticipating the claimed invention. As claimed, Gilbert discloses the claimed invention, as rejected above.

### ***enablement/indefinite rejection***

With respect to the "user selectable" feature, applicant argues that this should be implicit from the originally filed application. The originally filed application discusses "adaptability for use" at specification paragraph [0006], "many possible embodiments, the frame may be assembled in free space. In other words, many embodiments are possible wherein one may assemble the frame as it is held in one's hands" [0016], "sides of the assembled frame 100 may be similarly construed" [0025], "user desires to rearrange fuel" [0029], and "possible relationships among the dimensions of various components to optimize both the assembled and stowed configurations of the unit" [0050]. Nothing in the drawings support this "user selectable" claim feature. Each of

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these specification features support claimed different embodiments or configurations, but none are selectable by a user, as now claimed. It would be a stretch to import the claimed “user selectable” feature from the originally filed into the claims, since the specification and drawings, as originally filed do not support this claimed feature.

Applicant looks to Slattery to argue patentability, but that reference is not used in rejecting the claims. Furthermore, the feature of “user selectability” is patentably distinct from the argued “configuration being selected by a user of the device” because in the former step a user must actively select while the latter, the configuration merely supports being capable of or adapted to a user selection. This is a big difference as far as determining patentability.

Examiner has construed each of applicant’s cited specification support for user selectable feature, but finds no support as originally filed. In fact no where in the originally filed application is found the now claimed “user selectable variable construction” feature, because no where in the specification are the recitations “user” and “selectable” linked.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen M. Gravini whose telephone number is 571 272 4875. The examiner can normally be reached on normal weekday business hours (east coast time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Kenneth B. Rinehart can be reached on 571 272 4881. The fax phone



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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Stephen M. Gravini/  
Primary Examiner, Art Unit 3743